



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 12, 1998

Mr. Norbert J. Hart  
Assistant City Attorney  
City of Corpus Christi - Legal Department  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR98-0113

Dear Mr. Hart:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111597.

The City of Corpus Christi (the "city") received a request for a "copy of the bid documents (both Technical and Price) submitted by both the competing and winning bids in response to Reference File No. #BI-0199-97. These documents would be the documents currently in effect for the Collection Day Events scheduled during the 1997-1998 fiscal year." You enclosed for our review the bid documents submitted to the city by Laidlaw Environmental Services ("Laidlaw"), and assert that the information may be excepted from disclosure pursuant to section 552.305 of the Government Code. We have considered your argument and have reviewed the information submitted.<sup>1</sup>

Pursuant to section 552.305 of the Government Code, this office informed Laidlaw of the request and of its opportunity to claim the exceptions to disclosure it believes apply to the requested information. Laidlaw responded by arguing that the unit pricing information contained in Exhibit A of its proposal is commercial or financial information protected from disclosure under section 552.110 of the Government Code.

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<sup>1</sup>We note that although the requestor seeks documents relating to both the competing and winning bids, you submitted for our review only the documents relating to one company, Laidlaw. As you do not ask us for a ruling on, nor do you submit, any other company's bid information, this ruling does not address the issue of the confidentiality of any other such information, and we assume you have released any other such information to the requestor. We caution, however, that some of the information may be confidential by law or may implicate the proprietary interest of a third party. See Gov't Code § 552.352 (distribution of confidential information may constitute criminal offense).

Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. Commercial or financial information is excepted from disclosure under the second prong of section 552.110. In Open Records Decision No. 639 (1996), this office announced that it would follow the federal courts' interpretation of exemption 4 to the federal Freedom of Information Act when applying the second prong of section 552.110. In *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), the court concluded that for information to be excepted under exemption 4 to the Freedom of Information Act, disclosure of the requested information must be likely either to (1) impair the Government's ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *Id.* at 770.

"To prove substantial competitive harm, the party seeking to prevent disclosure must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure." *Sharyland Water Supply Corp. v. Block*, 755 F.2d 397, 399 (5th Cir.), *cert. denied*, 471 U.S. 1137 (1985) (footnotes omitted).

Laidlaw argues that disclosure of its unit pricing information "will result in substantial and irreparable competitive harm" to Laidlaw's competitive position as it would allow competitors "to match and undercut bids on the same project in the future when the project is up for bids again." This office has stated on many occasions that there is a legitimate public interest in the expenditure of public funds. See Open Records Decision Nos. 541 (1990) at 1-2, 520 (1989) at 5, 518 (1989) at 7, 233 (1980) at 2; Gov't Code 552.022(3). Moreover, this office has stated that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. See Open Records Decision 600 (1992). Federal cases applying the analogous FOIA exemption 4 have required a balancing of the public interest in disclosure with the competitive injury to the company in question. See Open Records Decision No. 494 (1988) at 6; see generally Freedom of Information Act Guide & Privacy Act Overview (1995) 136-138, 140-141, 151-152 (disclosure of prices is cost of doing business with government).

The public has a strong interest in knowing the prices charged by government contractors. In this situation, we do not believe that Laidlaw has established that its unit pricing information is confidential commercial or financial information that must be withheld. Consequently, the city may not withhold this information from public disclosure based on the commercial or financial information prong of section 552.110 of the Government Code.<sup>2</sup> See Open Records Decision No. 319 (1982) (pricing proposals may only be withheld under the predecessor to section 552.110

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<sup>2</sup>Our ruling is based upon our assumption that Laidlaw submitted the winning bid in response to Reference File No. #BI-0199-97. In this regard, we note that in footnote 2 of its brief to this office, Laidlaw states "[a]gain, note the factual similarities to this matter. (Laidlaw) was contracting with the City of Corpus Christi for household hazardous waste collection, management and disposal services."

during the bid submission process).<sup>3</sup> As neither Laidlaw nor the city seek to withhold any other portions of the requested information, the requested bid documents must be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/ch

Ref.: ID#111597

Enclosures: Submitted documents

cc: Mr. Shannon O'Leary  
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(w/o enclosures)

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<sup>3</sup>We note Laidlaw's argument that the United States District Court for the District of Columbia recently found as contrary to law the U.S. Department of Energy's ("DOE") decision to release unit price information of a subcontractor of an entity contracting with the DOE. *Chemical Waste Management, Inc. v. O'Leary*, 1995 WL 115894, February 25, 1995. We do not believe this decision is controlling in this case since in *Chemical Waste Management, Inc.*, the plaintiff whose pricing information was ordered released was a subcontractor not actually doing business with the DOE, whereas we assume Laidlaw in our case is contracting with the city. As the district court stated, "the Court notes that DOE has never concluded nor contended that plaintiff is doing business with the government; rather, the undisputed facts are that plaintiff is a subcontractor with Westinghouse, DOE's M & O contractor for the Savannah River Site. Chem Waste is not in privity of contract with DOE, nor is it entitled to the procedural benefits afforded government contractors." 1995 WL 115894, 5 (D.D.C.).